

ALABAMA STATE BOARD OF PODIATRY
ADMINISTRATIVE CODE

CHAPTER 730-X-4
DISCIPLINARY ACTIONS, HEARINGS AND APPEALS

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730-X-4-.01 Application And Scope.

Unless otherwise specified, all hearings conducted by the Alabama State Board of Podiatry shall be considered a contested case under the Alabama Administrative Procedure Act (Code of Ala. 1975, § 41-22-1 et seq.), and shall be conducted in accordance with the requirements of that act, and the rules and regulations as set out in this chapter. Nothing contained herein shall preclude the informal disposition of contested cases as permitted by Code of Ala. 1975, § 41-22-12(e) and other pertinent provisions of these rules.

Author:

Statutory Authority: Code of Ala. 1975, §§ 41-22-1, et seq.;
34-24-252, 34-24-276.

History: Filed February 1, 1985.

**730-X-4-.02 Grounds For Denial Of, Suspension, Revocation
Or Nonrenewal Of A License ToPractice Podiatry.**

A license to practice podiatry may be denied to any person failing to meet the qualifications for license as set out in Code of Ala. 1975, §§ 34-24-271, 273, and Rules 730-X-3-.01, et seq. Renewal of a license to practice podiatry may be denied for failure to comply with Code of Ala. 1975, § 34-24-275. A license to practice podiatry may be suspended or revoked for any of the reasons expressed in Code of Ala. 1975, § 34-24-276.

Author: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§ 34-24-271, 34-24-273,
34-24-275, 34-24-276.

History: Filed February 1, 1985. **Amended:** Filed May 18, 1988.

730-X-4-.03 Notice.

(1) No action to revoke, suspend or nonrenew a license to practice podiatry shall be taken until the licensee has been afforded an opportunity for a hearing after reasonable notice in writing, verified by oath, has been served. Where personal service cannot be effected, the Board may cause notice to be given by certified mail, return receipt requested, and if service cannot be obtained by certified mail, service can be effected by publishing an abbreviated notice at least 30 days prior to the date set for said hearing in a newspaper published in the county in which the licensee was last known to practice that at a definite time and place a hearing will be held by the Board concerning that person's license to practice podiatry.

(2) The notice, except abbreviated notice for service, shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters or charges asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished.

Author: Copeland, Franco, Screws & Gill, P.A.

Statutory Authority: Code of Ala. 1975, §§ 34-24-276, 41-22-1, et seq.

History: Filed February 1, 1985. **Amended:** Filed May 18, 1988.

730-X-4-.04 Conduct Of Hearings In Contested Cases.

(1)(a) The president of the Board, or in his absence, the vice president of the Board, or in his absence, the secretary-treasurer of the Board, shall preside during hearings but may rely upon the assistance and advice of a hearing officer. A quorum of the Board necessary to decide contested cases is set at five (5) members of the Board.

(b) In all instances in which a complaint has been filed with the Board, one member of the Board shall be appointed the

investigating officer. This Board member shall assist in the investigation, and if necessary, the prosecution, of the case, and shall not vote at the hearing.

(2) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved and to be represented by counsel at their own expense.

(4) Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

(5) Parties and witnesses may be subpoenaed and compelled to attend the hearing and shall testify under oath and may be sworn by any member of the Board. The expense of the subpoenas, including mileage and per diem as specified by law, shall be borne by the party requesting the subpoena. The Board or hearing officer may prescribe reasonable time limitations for the filing of requests for witnesses and documents and may further require the payment of the expenses per such subpoena in advance.

(6) Contested Hearings shall be open to the public, unless private hearings are otherwise authorized by law. The proceedings shall be recorded either by mechanized means or by qualified shorthand reports. The proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of the proceedings or the transcription thereof shall be filed with and maintained by the Board for at least five years from the date of decision, and shall be made available for inspection by the public except in those cases where private hearings are authorized by law, or where the proceedings shall be ordered sealed by order of court, or are required to be sealed by statute.

(7) Evidence.

(a) The rules of evidence as applied in non-jury civil cases in the circuit courts of this state shall be followed insofar as possible. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be

expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified form; provided, the adversary party shall not be denied the right of cross-examination of the witness.

(b) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Board. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Board. Parties shall be afforded an opportunity to contest such facts before the decision is announced unless the Board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

(e) The experience, technical competence, and specialized knowledge of the Board may be utilized in the evaluation of the evidence.

(8) Record. The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) All evidence received or considered and all other submission; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information.

(c) A statement of all matters officially noticed.

(d) All questions and offers of proof, objections and rulings thereon.

(e) All proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing officer at the hearing.

(g) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration of the case unless such memoranda or data is protected as confidential or privileged; provided, if such memoranda or data contains information of a proprietary and

confidential nature, it shall be protected by the Board from public disclosure.

(h) The recording or stenographic notes of the proceedings or the transcription thereof if requested by a party or the Board.

(9) Proposed Orders; Final Decisions; Examinations of Evidence. In a contested case, a majority of the Board who are to render the final order must be in accord for the decision of the Board to be a final decision. If any official of the Board who is to participate in the final decision has not heard the case or read the record, and his vote would affect the final decision, the final decision shall not be made until a proposed order is prepared and an opportunity is afforded to each party adversely affected by the proposed order to file exceptions and present briefs and oral argument to the official not having heard the case or read the record. The proposed order shall contain a statement of the reasons there for and of each issue of fact or law necessary to the proposed decision prepared by the person who conducted the hearing or one who read the record. The proposed order shall become the final decision of the Board without further proceedings unless there are exceptions filed to the Board within the time provided by rule. The parties by written stipulation may waive compliance with this section.

(10) Final Decisions and Orders.

(a) The final order in a proceeding which affects substantial interest shall be in writing and made a part of the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within thirty days:

1. After the hearing is concluded, if conducted by the Board;

2. After a recommended order, or findings and conclusions are submitted to the Board and mailed to all parties, if the hearing is conducted by a hearing officer; or

3. After the Board has received the written and oral material it has authorized to be submitted, if there has been no hearing. The 30 day period may be waived or extended with the consent of all parties.

(b) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each

proposed finding and a brief statement of the grounds for denying the application or request.

(c) If the Board finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such findings in the final order, which shall be appealable or enjoinable from the date rendered.

(d) Parties shall be notified either personally or by certified mail, return receipt requested, of any order; and, unless waived, a copy of the final order shall be so delivered or mailed to each party or to his attorney of record.

(11) Application for Rehearing.

(a) Any party to a contested case who deems himself aggrieved by a final order or Board Action and who desires to have the same modified, set aside, or reconsidered may within fifteen days after entry of said order or Board action file an application for rehearing which shall specify in detail the grounds for the relief sought therein and authorities in support thereof.

(b) The filing of such an application for rehearing shall not extend, modify, suspend or delay the effective date of the order, and said order shall take effect on the date fixed by the agency and shall continue in effect unless and until said application shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

(c) Such application for rehearing will lie only if the final order is:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the Board;
3. in violation of an agency rule;
4. made upon unlawful procedure;
5. affected by other error of law;
6. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
7. unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(d) Copies of such application for rehearing shall be served on all parties of record, who may file replies thereto.

(e) Within 30 days from the filing of an application the Board may in its discretion enter an order:

1. setting a hearing on the application for a rehearing which shall be heard as soon as practicable; or
2. with reference to the application without a hearing; or
3. grant or deny the application.

(f) If the Board enters no order whatsoever regarding the application within the 30 day period, the application shall be deemed to have been denied as of the expiration of the 30 day period.

Author:

Statutory Authority: Code of Ala. 1975, §§ 41-22-1, et seq.

History: Filed February 1, 1985. **Amended:** Filed October 22, 1993; effective November 26, 1993.

730-X-4-.05 Judicial Review Of Contested Cases.

A person who has exhausted all administrative remedies available within the agency (other than rehearing) and who is aggrieved by a final decision in a contested case is entitled to judicial review as provided by the Alabama Administrative Procedure Act, Code of Ala. 1975, §§ 41-22-1, et seq.

Author:

Statutory Authority: Code of Ala. 1975, §§ 41-22-1, et seq.

History: Filed February 1, 1985.

730-X-4-.06 Hearing Officer.

(1) A hearing officer is an individual appointed by the Board to act in such capacities and with such authority as is specified herein. A hearing officer may be an attorney licensed to practice law in the State of Alabama, or may be any person with the experience and qualifications necessary to carry out the duties of the hearing officer.

(2) The general duties of the hearing officer shall be to guide and direct the court of contested cases before the Board, to advise the Board on matters of law and evidence pertaining to those contested cases and to assist the Board in the preparation of orders and decrees resulting from hearings on contested cases. Specifically, the hearing officer shall be empowered to:

- (a) Rule upon any motions contesting or challenging the legal sufficiency of a complaint, order to show cause, or other document which is the basis of a contested case, subject to the limitation set forth in paragraph (e) below.
 - (b) Rule on all prehearing motions by all parties to a contested case except that the hearing officer may not grant a continuance or postponement of a hearing in a contested case without the consent of the president of the Board.
 - (c) Order the attendance of parties and/or attorneys at hearings and conferences on matters related to the contested case.
 - (d) Establish on behalf of the Board submission dates, deadlines and time tables which shall be binding on the parties in all matters related to the orderly conduct of the contested case.
 - (e) Enter orders on behalf of the Board when the Board is not in session on legal matters related to a pending contested case, except that the hearing officer is not authorized to dismiss a complaint. The hearing officer may order the complainant to file a more definite statement or to amend his complaint to provide additional information. Dismissal of a complaint will only be upon the order of the Board.
 - (f) Administer oaths and to certify the authenticity of documents when required in the discharge of his duties as hearing officer in a contested case.
 - (g) Direct that evidence relevant to the general character and reputation of the registrant be submitted in writing by affidavit or to place reasonable limitations upon the number of witnesses permitted to testify as to the character and reputation of the registrant.
 - (h) Render advice as to the president of the Board on the conduct of all aspects of hearings on contested cases.
- (3) Except as limited above, the hearing officer is authorized to rule on all legal matters, including motions addressed to the sufficiency of the complaint, objections to the evidence, motions to dismiss for lack of evidence, and any other matters requiring a legal opinion. The ruling of the hearing officer shall be deemed to be the official ruling of the Board unless that ruling is challenged by a member of the Board in which case the Board shall consider the challenge to the ruling of the hearing officer outside the presence of the parties and may affirm, modify or overrule the decision of the hearing officer.
- (4) The hearing officer shall advise the Board on matters of evidence and law during its deliberations and shall, if requested,

prepare and present for consideration by the Board proposed findings of fact and proposed conclusions of law; provided, however, that the Board in its final decision may within its sole discretion, modify, alter, amend, or disregard such proposed findings of fact and conclusions of law.

(5) When directed by the Board, the hearing officer shall prepare the final order reflecting the decision of the Board in each contested case. The final order shall be executed and authenticated in the manner prescribed by the Board.

(6) When directed by the Board, the hearing officer shall notify all parties to the hearing of the final order of the Board and of all appellate remedies available to any party that is adversely affected by a decision of the Board.

(7) In addition, the hearing officer shall be authorized to perform such duties and functions in each specific case as may be prescribed by the Board, it being the intent of this rule that the hearing officer shall be the chief legal advisor to the Board in the conduct and disposition of all contested cases; however, the Board shall retain the authority in all cases to hear all evidence and argument and be the sole judge of the facts. The Board shall fix the penalty or restriction, if any, to be imposed at the conclusion of a contested case. The Board shall appoint a hearing officer in each contested case unless the case is subject to informal disposition as otherwise provided in these rules.

(8) The person appointed by the Board to act as a hearing officer in the contested case shall not have participated in the investigation or prosecution of the registrant in the matters pertaining to the contested case. The hearing officer shall not have a manifest conflict of interest with any party in a contested case.

Author:

Statutory Authority: Code of Ala. 1975, §§34-24-252; 41-22-1, et seq.

History: Filed February 1, 1985.